

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL LAVERNE JONES,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 222835

Oakland Circuit Court

LC No. 97-155863-FH

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from a jury conviction of first-degree retail fraud, MCL 750.356c, and a plea-based conviction of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12, to two to fifteen years' on the retail fraud conviction and six months in jail on the drug conviction. We affirm but remand for correction of the judgment of sentence. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that the trial court erred when it denied his motion to dismiss for violation of the 180-day rule, MCL 780.131(1); MSA 28.969(1)(1); MCR 6.004(D). "The purpose of the rule is to dispose of untried charges against prison inmates so that sentences can run concurrently." *People v Smielewski*, 235 Mich App 196, 198; 596 NW2d 636 (1999). Trial need not actually commence within the 180-day period. All that is required is that the prosecution show "that it took good faith action within that time to ready the case for trial." *People v Finley*, 177 Mich App 215, 219; 441 NW2d 774 (1989).

Defendant was charged with the instant offenses in July 1997. Defendant committed the offense while on parole and at the time the complaint was issued, he was being held in Oakland County Jail on a parole detainer. However, "a paroled prisoner who is being detained locally, and against whom a parole hold has been filed, is not, because of the hold, awaiting incarceration in a state prison nor an inmate of a penal institution to whom the 180-day rule applies." *People v Gambrell*, 157 Mich App 253, 257; 403 NW2d 535 (1987). Defendant was not incarcerated for violation of parole until August 20, 1997. Upon revocation of his parole, defendant became a state prisoner to whom the 180-day rule applied. *People v Chavies*, 234 Mich App 274, 279; 593 NW2d 655 (1999). However, the 180-day period does not begin to run unless the prosecutor knew defendant had been returned to prison or the Department of Corrections knew or should

have known of the pending charge, MCR 6.004(D)(1); *People v Taylor*, 199 Mich App 549, 552; 502 NW2d 348 (1993), and defendant has not shown that the prosecutor had actual knowledge that defendant had been returned to prison. In any event, defendant was paroled again 154 days later and was not incarcerated again for violation of parole while this case was pending. Therefore, while more than 180 days elapsed between the time defendant was charged and the time he was convicted, he was never an inmate in a state correctional facility for more than 180 days, so the rule was never violated. Even if there had been a 180-day problem, defendant committed the instant offenses while on parole, making them subject to a mandatory consecutive sentence. MCL 768.7a(2); MSA 28.1030(1)(2). Because any prison sentence that might have been imposed on defendant upon conviction was a mandatory consecutive sentence, the 180-day rule did not apply. *People v Falk*, 244 Mich App 718, 721; 625 NW2d 476 (2001); *Chavies*, *supra* at 280-281. Although the trial court erred when it denied the motion on the ground that defendant had not been deprived of a speedy trial, we will not reverse when the trial court reaches the right result for the wrong reason. *People v Lyons*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

We note that the transcripts from defendant's sentencing indicate that he was sentenced to six months' on the drug conviction and two to fifteen years' on the retail fraud conviction and that the latter sentence was to be consecutive to any parole violation sentence. However, the judgment of sentence states that defendant was sentenced to two to fifteen years' on each offense and that those offenses were concurrent to one another and to any parole violation. Accordingly, we remand for correction of the judgment of sentence.

Affirmed and remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy